

AMENDED IN SENATE MAY 24, 2013

AMENDED IN SENATE APRIL 1, 2013

SENATE BILL

No. 383

Introduced by Senator Jackson

February 20, 2013

An act to amend Sections 1747.02 and 1747.08 of the Civil Code, relating to credit cards.

LEGISLATIVE COUNSEL'S DIGEST

SB 383, as amended, Jackson. Credit cards: ~~downloadable products:~~ personal information.

~~The~~

Existing state and federal law regulates the provision of credit and the use of credit cards. The Song-Beverly Credit Card Act of 1971 generally regulates credit card transactions and prohibits a person or entity that accepts credit cards for the transaction of business from requesting, or requiring as a condition to accepting the credit card, that the cardholder write any personal identification information, as defined, upon the credit card transaction form or otherwise. Existing law prohibits a person or entity that accepts credit cards for the transaction of business from requesting, or requiring as a condition to accepting the credit card, that the cardholder provide his or her personal identification information to the person or entity to be written or caused to be written upon the credit card transaction form or otherwise. Notwithstanding those provisions, existing law authorizes a person or entity that accepts credit cards for the transaction of business to require the cardholder, as a condition to accepting the credit card, to provide reasonable forms of positive identification, which may include a driver's license or a California state identification card, provided that the information is not

written or recorded on the credit card transaction form or otherwise. Existing law authorizes the use of ZIP Code information in a sales transaction at a retail motor fuel dispenser or retail motor fuel payment island with an automated cashier that uses the ZIP Code information solely for prevention of fraud, theft, or identity theft.

This bill would authorize a person or entity that accepts credit cards in an online ~~transaction involving an electronically downloadable product~~, transaction, as defined, to require a cardholder, as a condition to accepting a credit card as payment in full or in part for goods or services, to provide the billing ZIP Code and street address number associated with the credit card, if used solely for the prevention of fraud, theft, or identity theft. *The bill would authorize the person or entity accepting the credit card to require a cardholder, as a condition to accepting a credit card as payment in full or in part, in an online transaction, to provide additional personal information, if it requires that information for the prevention of fraud, theft, or identity theft, and the additional personal information is used solely for the prevention of fraud, theft, or identity theft.* The bill would require that person or entity to destroy or dispose of the ZIP ~~Code and Code~~, street address ~~number~~ number, *and any additional personal information it requires* in a secure manner after it is no longer needed for the prevention of fraud, theft, or identity theft. The bill would further prohibit that person or entity from aggregating the ZIP ~~Code and Code~~, street address ~~number~~ number, *or additional personal information it requires* with any other personal identification information, as defined, and from sharing the ZIP ~~Code and Code~~, street address ~~number~~ number, *or additional personal information it requires* with any other person or entity.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. (a) The Legislature finds and declares all of the
- 2 following:
- 3 (1) The Song-Beverly Credit Card Act of 1971 establishes
- 4 privacy and other protections for cardholders. These protections
- 5 prohibit a person, firm, partnership, association, or corporation
- 6 from requesting or requiring a cardholder to provide personal
- 7 identification information in a credit card transaction, with
- 8 specified, limited exceptions.

1 (2) The Song-Beverly Credit Card Act of 1971 applies to credit
2 card transactions without reference to the method, platform, or
3 technology used to process or to complete the transaction.

4 (3) The California Supreme Court, in *Apple Inc. v. Superior*
5 *Court* (2013) 56 Cal.4th 128, declared the Song-Beverly Credit
6 Card Act of 1971 not applicable to an online transaction involving
7 a downloadable product. As a result, the privacy protections of the
8 act do not apply to those transactions.

9 (b) It is the intent of the Legislature to apply the provisions of
10 the Song-Beverly Credit Card Act of 1971 to all *online* credit card
11 transactions, including online transactions involving a
12 downloadable product.

13 SEC. 2. Section 1747.02 of the Civil Code is amended to read:
14 1747.02. As used in this title:

15 (a) “Credit card” means any card, plate, coupon book, or other
16 single credit device existing for the purpose of being used from
17 time to time upon presentation to obtain money, property, labor,
18 or services on credit. “Credit card” does not mean any of the
19 following:

20 (1) Any single credit device used to obtain telephone property,
21 labor, or services in any transaction under public utility tariffs.

22 (2) Any device that may be used to obtain credit pursuant to an
23 electronic fund transfer, but only if the credit is obtained under an
24 agreement between a consumer and a financial institution to extend
25 credit when the consumer’s asset account is overdrawn or to
26 maintain a specified minimum balance in the consumer’s asset
27 account.

28 (3) Any key or card key used at an automated dispensing outlet
29 to obtain or purchase petroleum products, as defined in subdivision
30 (c) of Section 13401 of the Business and Professions Code, that
31 will be used primarily for business rather than personal or family
32 purposes.

33 (b) “Accepted credit card” means any credit card that the
34 cardholder has requested or applied for and received or has signed,
35 or has used, or has authorized another person to use, for the purpose
36 of obtaining money, property, labor, or services on credit. Any
37 credit card issued in renewal of, or in substitution for, an accepted
38 credit card becomes an accepted credit card when received by the
39 cardholder, whether the credit card is issued by the same or a
40 successor card issuer.

1 (c) “Card issuer” means any person who issues a credit card or
2 the agent of that person for that purpose with respect to the credit
3 card.

4 (d) “Cardholder” means a natural person to whom a credit card
5 is issued for consumer credit purposes, or a natural person who
6 has agreed with the card issuer to pay consumer credit obligations
7 arising from the issuance of a credit card to another natural person.
8 For purposes of Sections 1747.05, 1747.10, and 1747.20, the term
9 includes any person to whom a credit card is issued for any
10 purpose, including business, commercial, or agricultural use, or a
11 person who has agreed with the card issuer to pay obligations
12 arising from the issuance of that credit card to another person.

13 (e) “Retailer” means every person other than a card issuer who
14 furnishes money, goods, services, or anything else of value upon
15 presentation of a credit card by a cardholder. “Retailer” shall not
16 mean the state, a county, city, city and county, or any other public
17 agency.

18 (f) “Unauthorized use” means the use of a credit card by a
19 person, other than the cardholder, (1) who does not have actual,
20 implied, or apparent authority for that use and (2) from which the
21 cardholder receives no benefit. “Unauthorized use” does not include
22 the use of a credit card by a person who has been given authority
23 by the cardholder to use the credit card. Any attempted termination
24 by the cardholder of the person’s authority is ineffective as against
25 the card issuer until the cardholder complies with the procedures
26 required by the card issuer to terminate that authority.
27 Notwithstanding the above, following the card issuer’s receipt of
28 oral or written notice from a cardholder indicating that it wishes
29 to terminate the authority of a previously authorized user of a credit
30 card, the card issuer shall follow its usual procedures for precluding
31 any further use of a credit card by an unauthorized person.

32 (g) “Inquiry” means a writing that is posted by mail to the
33 address of the card issuer to which payments are normally tendered,
34 unless another address is specifically indicated on the statement
35 for that purpose, then to that other address, and that is received by
36 the card issuer no later than 60 days after the card issuer transmitted
37 the first periodic statement that reflects the alleged billing error,
38 and that does all of the following:

39 (1) Sets forth sufficient information to enable the card issuer to
40 identify the cardholder and the account.

1 (2) Sufficiently identifies the billing error.

2 (3) Sets forth information providing the basis for the
3 cardholder's belief that the billing error exists.

4 (h) "Response" means a writing that is responsive to an inquiry
5 and mailed to the cardholder's address last known to the card
6 issuer.

7 (i) "Timely response" means a response that is mailed within
8 two complete billing cycles, but in no event later than 90 days,
9 after the card issuer receives an inquiry.

10 (j) "Billing error" means an error by omission or commission
11 in (1) posting any debit or credit, or (2) in computation or similar
12 error of an accounting nature contained in a statement given to the
13 cardholder by the card issuer. "Billing error" does not mean any
14 dispute with respect to value, quality, or quantity of goods, services,
15 or other benefit obtained through use of a credit card.

16 (k) "Adequate notice" means a printed notice to a cardholder
17 that sets forth the pertinent facts clearly and conspicuously so that
18 a person against whom it is to operate could reasonably be expected
19 to have noticed it and understood its meaning.

20 (l) "Secured credit card" means any credit card issued under an
21 agreement or other instrument that pledges, hypothecates, or places
22 a lien on real property or money or other personal property to
23 secure the cardholder's obligations to the card issuer.

24 (m) "Student credit card" means any credit card that is provided
25 to a student at a public or private college or university and is
26 provided to that student solely based on his or her enrollment in a
27 public or private university, or is provided to a student who would
28 not otherwise qualify for that credit card on the basis of his or her
29 income. A "student credit card" does not include a credit card
30 issued to a student who has a cocardholder or cosigner who would
31 otherwise qualify for a credit card other than a student credit card.

32 (n) "Retail motor fuel dispenser" means a device that dispenses
33 fuel that is used to power internal combustion engines, including
34 motor vehicle engines, that processes the sale of fuel through a
35 remote electronic payment system, and that is in a location where
36 an employee or other agent of the seller is not present.

37 (o) "Retail motor fuel payment island automated cashier" means
38 a remote electronic payment processing station that processes the
39 retail sale of fuel that is used to power internal combustion engines,
40 including motor vehicle engines, that is in a location where an

1 employee or other agent of the seller is not present, and that is
2 located in close proximity to a retail motor fuel dispenser.

3 (p) “~~Online transaction involving an electronically downloadable~~
4 ~~product~~” *transaction*” means a credit card transaction for a product,
5 service, subscription, or any other consideration, in which the
6 product, service, subscription, or consideration is ~~provided~~
7 *transacted* by means of a ~~download to the cardholder’s~~ computer,
8 telephone, or other electronic device.

9 SEC. 3. Section 1747.08 of the Civil Code is amended to read:

10 1747.08. (a) Except as provided in subdivision (c), a person,
11 firm, partnership, association, or corporation that accepts credit
12 cards for the transaction of business ~~may~~ *shall* not do any of the
13 following:

14 (1) Request, or require as a condition to accepting the credit
15 card as payment in full or in part for goods or services, the
16 cardholder to write any personal identification information upon
17 the credit card transaction form or otherwise.

18 (2) Request, or require as a condition to accepting the credit
19 card as payment in full or in part for goods or services, the
20 cardholder to provide personal identification information, which
21 the person, firm, partnership, association, or corporation accepting
22 the credit card writes, causes to be written, or otherwise records
23 upon the credit card transaction form or otherwise.

24 (3) Utilize, in any credit card transaction, a credit card form
25 ~~which~~ *that* contains preprinted spaces specifically designated for
26 filling in any personal identification information of the cardholder.

27 (b) For purposes of this section, “personal identification
28 information” means information concerning the cardholder, other
29 than information set forth on the credit card, and including, but
30 not limited to, the cardholder’s address and telephone number.

31 (c) Subdivision (a) does not apply in the following instances:

32 (1) If the credit card is being used as a deposit to secure payment
33 in the event of default, loss, damage, or other similar occurrence.

34 (2) Cash advance transactions.

35 (3) If any of the following applies:

36 (A) The person, firm, partnership, association, or corporation
37 accepting the credit card is contractually obligated to provide
38 personal identification information in order to complete the credit
39 card transaction.

(B) The person, firm, partnership, association, or corporation accepting the credit card in a sales transaction at a retail motor fuel dispenser or retail motor fuel payment island automated cashier uses the ZIP Code information solely for prevention of fraud, theft, or identity theft.

(C) The person, firm, partnership, association, or corporation accepting the credit card is obligated to collect and record the personal identification information by federal or state law or regulation.

(4) If personal identification information is required for a special purpose incidental but related to the individual credit card transaction, including, but not limited to, information relating to shipping, delivery, servicing, or installation of the purchased merchandise, or for special orders.

(d) (1) This section does not prohibit any person, firm, partnership, association, or corporation from requiring the cardholder, as a condition to accepting the credit card as payment in full or in part for goods or services, to provide reasonable forms of positive identification, which may include a driver's license or a California state identification card, or where one of these is not available, another form of photo identification, provided that none of the information contained thereon is written or recorded on the credit card transaction form or otherwise. If the cardholder pays for the transaction with a credit card number and does not make the credit card available upon request to verify the number, the cardholder's driver's license number or identification card number may be recorded on the credit card transaction form or otherwise.

(2) Notwithstanding subdivision (a), a person, firm, partnership, association, or corporation accepting the credit card may require a cardholder, as a condition to accepting a credit card as payment in full or in part in an online transaction involving an electronically downloadable product, transaction, to provide the billing ZIP Code number and numerical portion of the street address associated with the credit card, if used solely for the prevention of fraud, theft, or identity theft. *The person, firm, partnership, association, or corporation accepting the credit card may require a cardholder, as a condition to accepting a credit card as payment in full or in part, in an online transaction, to provide additional personal information, if it requires that information for the prevention of fraud, theft, or identity theft, and the additional personal*

1 *information is used solely for the prevention of fraud, theft, or*
2 *identity theft.* The person, firm, partnership, association, or
3 corporation accepting the credit card shall destroy or dispose of
4 the ~~ZIP-Code and Code~~, street address ~~number~~ *number*, and any
5 *additional personal information it requires pursuant to this*
6 *subdivision* in a secure manner after it is no longer needed for the
7 prevention of fraud, theft, or identity theft. The person, firm,
8 partnership, association, or corporation accepting the credit card
9 ~~may~~ *shall* not aggregate the ~~ZIP-Code and Code~~, street address
10 ~~number~~ *number*, or *additional personal information it requires*
11 *pursuant to this subdivision* with any other personal identification
12 information and ~~may~~ *shall* not share the ~~ZIP-Code and Code~~, street
13 address ~~number~~ *number*, or *additional personal information it*
14 *requires pursuant to this subdivision* with any other person, firm,
15 partnership, association, or corporation.

16 (e) Any person who violates this section shall be subject to a
17 civil penalty not to exceed two hundred fifty dollars (\$250) for the
18 first violation and one thousand dollars (\$1,000) for each
19 subsequent violation, to be assessed and collected in a civil action
20 brought by the person paying with a credit card, by the Attorney
21 General, or by the district attorney or city attorney of the county
22 or city in which the violation occurred. However, no civil penalty
23 shall be assessed for a violation of this section if the defendant
24 shows by a preponderance of the evidence that the violation was
25 not intentional and resulted from a bona fide error made
26 notwithstanding the defendant's maintenance of procedures
27 reasonably adopted to avoid that error. When collected, the civil
28 penalty shall be payable, as appropriate, to the person paying with
29 a credit card who brought the action, or to the general fund of
30 whichever governmental entity brought the action to assess the
31 civil penalty.

32 (f) The Attorney General, or any district attorney or city attorney
33 within his or her respective jurisdiction, may bring an action in
34 the superior court in the name of the people of the State of
35 California to enjoin violation of subdivision (a) and, upon notice
36 to the defendant of not less than five days, to temporarily restrain
37 and enjoin the violation. If it appears to the satisfaction of the court
38 that the defendant has, in fact, violated subdivision (a), the court
39 may issue an injunction restraining further violations, without
40 requiring proof that any person has been damaged by the violation.

1 In these proceedings, if the court finds that the defendant has
2 violated subdivision (a), the court may direct the defendant to pay
3 any or all costs incurred by the Attorney General, district attorney,
4 or city attorney in seeking or obtaining injunctive relief pursuant
5 to this subdivision.

6 (g) Actions for collection of civil penalties under subdivision
7 (e) and for injunctive relief under subdivision (f) may be
8 consolidated.

9 (h) The changes made to this section by Chapter 458 of the
10 Statutes of 1995 apply only to credit card transactions entered into
11 on and after January 1, 1996. Nothing in those changes shall be
12 construed to affect any civil action~~which~~ *that* was filed before
13 January 1, 1996.

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